IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4748 OF 2005

Madhukar Dattaram Narkar. ... Applicant.

Versus.

The State of Maharashtra. ... Respondent.

Shri C.G.Gavnekar for the Applicant.

Shri R.Y.Mirza, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 17th August, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State.

2. The Applicant along with the co-accused are being prosecuted for offence under section 376(g), 323 and 506 of the Indian Penal Code. The F.I.R. has been filed by the prosecutrix. According to the case of the prosecutrix, on 5th February 2005 in the early morning at about 3.30 a.m. she was sleeping along with her husband in her house. At that time someone knocked the door of the house. When the door was opened by the Applicant, she found the Applicant alongwith two co-accused standing outside. As threat was given by the Applicant and co-accused, the prosecuted opened the door. The case of the prosecutrix is that the Applicant and the other co-accused Kumar assaulted her husband by fist blows and demanded a sum of Rs.2000/-. According

to the prosecutrix, Kumar kept the husband of the Applicant in the room. The Applicant stood at the door and the other accused Suresh took the prosecutrix outside the house near the bore well and committed offence under section 376 of IPC.

3. The learned Counsel for the Applicant submitted that the only role ascribed to the Applicant is that he was standing at the door of the house when the co-accused committed the offence. He submitted that the prosecutrix was working as a dancer in a bar and in fact she had invited the accused to the house. He submitted that charge sheet has been filed long back and it is not necessary to continue the detention of the Applicant. He also pointed out the medical report of the examination of the prosecutrix. The learned A.P.P. submitted that considering the gravity of the offence and considering the fact that the Applicant is named in the F.I.R. he is not entitled to be enlarged on bail.

4. The F.I.R. discloses that the Applicant assaulted the husband of the prosecutrix by fist belows and when co-accused Suresh committed offence under section 376, the Applicant was standing at the door of the house. After perusal of the statement of one Anant Nivruti Patil, it is seen that the prosecutrix was working as a dancer in a bar. According to him the accused persons came to the bar where the prosecutrix was working early

morning at 1.30 a.m. and stated to the said witness that they wanted to recover a sum of Rs.10,000/- from one Phulsing who was residing with the prosecutrix and the prosecutrix had called them to her residence at 3.00 a.m. on the same day. Even according to the version of the prosecutrix, the Applicant was standing at the door of the house while in the adjoining open space, the co-accused committed offence under section 376 of the said Code. The Applicant is in custody from 5th February 2005. The charge sheet is already filed after completion of the investigation. Considering the facts of the case and considering the specific role ascribed to the Applicant, in my view a case is made out for enlarging the Applicant on bail subject to stringent conditions.

5. Hence I pass the following order:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.55 of 2005 of Panvel Police Station, subject to furnishing a personal bond of Rs.15,000/- with one or two local sureties.

(ii) Bail is granted subject to condition that till conclusion of trial the Applicant shall report to the concerned Police

Station on every Sunday between 11.00 a.m. and 12.00 noon.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

Judge.